APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/037,822	03/10/1998	SATORU MOTOYAMA	25484.00643	7579

25224	7590	12/21/2004	

MORRISON & FOERSTER, LLP
555 WEST FIFTH STREET
SUITE 3500
LOS ANGELES, CA 90013-1024

EXAMINER
WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/037,822	MOTOYAMA, SATORU
	Examiner	Art Unit
	Stephan F Willett	2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>23 September 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>29,33,37,41-47,50 and 52</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) <u>29,33,37,47,50 and 52</u> is/are allowed.

6)☒ Claim(s) <u>41-46</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Allowable Subject Matter

1.   Claims 29, 33, 37, 47, 50 and 52 are allowed. The reasons these claims were allowed is

that "unnatural data is data which rapidly changes volume of a musical tone" is removed and

then delayed when transmitted.

Claim Rejections - 35 USC □ 112

1.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and
> distinctly claiming the subject matter which the applicant regards as his invention.

2.   .   Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention. The "received first from the external device" and "received musical data is the

first received data" is unclear. It is unclear whether the first data is relative to the "external

device" or relative to all the data received. This also highlights that clarity could be added so the

first data is relative to what other data, i.e. all the data received or a song?

Claim Rejections - 35 USC ' 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et

al. with Patent Number 5,883,957 in view of Isozaki with Patent Number 5,999,905.

4.   Regarding claims 41, 45-46, Moline teaches a quasi-real time or streaming MIDI music

playing technique. Moline teaches receiving music data over a public communications line or

the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data, col.

9, lines 43-46. Moline teaches receiving first time information as "MIDI file reader includes two

subcomponents ... parser reads events in order from track, each event of course includes event

message and elapsed time descriptor", col. 6, lines 44-48, and particularly, an elapsed time

descriptor is converted to time stamp, col. 6, lines 58-59 and in more detail, col. 6, lines 51-55.

Moline teaches subtracting a predetermined time [time delay] from time information as "the

delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track

that must be accumulated before receiver begins playing the track is determined by a delay

parameter set by the user of receiver", col. 12, lines 1-3, "delay 617 in Fig. 6", col. 11, line 67.

Moline teaches storing means for temporarily storing the data received by said reception means

as "MIDI stream generator keeps track of the last event that it output, the amount of time that has

actually elapsed since it began playing the track, and the total amount of time specified by the

elapsed time indicators in events played thus far", col. 6, lines 26-31, and "the result of this

operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54.

Moline teaches processing means for starting the processing of the data temporarily stored in

said memory when said second time information reaches the first as "output event messages until

either an event is reached whose time stamp is greater", and "this incremental addition of parts",

col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin

[subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64, "beginning

at the start of stored track, the time stamp of each event is added to the server start time and

subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI

stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines

10-20. Moline teaches specific or first data as "type" of data, col. 9, lines 42-43. Moline teaches

"when the browser receives", col. 9, line 42 which means if it is determined that the type of data

is "first" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5,

lines 51-61 then the data may or may not be delayed. Also, Moline teaches specific or first data

as "the music begins with the part contained in the first track to be received", col. 8, lines 1-2.

Moline teaches the invention in the above claims except for explicitly teaching a second time,

however, Moline waits the said second time until the track is played. In that Moline operates to

buffer data for quasi-real time play the artisan would have looked to the computer data streaming

arts for details of buffering signals. In that art, Isozaki, a related data buffering system, teaches a

chaining of data streams. Isozaki, specifically teaches "a start time", col. 11, lines 2-3. A second

time is taught. The motivation to incorporate a stated second time insures that data is generated

at the right time. Thus, it would have been obvious to one of ordinary skill in the art to

incorporate the computed time as taught in Isozaki into the MIDI player described in the Moline

patent because Moline operates with delay times to achieve streaming data and Isozaki suggests

that streaming of data can be obtained with a second computed time. Therefore, by the above

rational, the above claim(s) are rejected.

1.   Regarding claims 42, Moline teaches an absolute time added to said first time as Atime

stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of [the] track@, col. 6, lines 53-54.

2.   Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines 26-27.

3.   Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11, lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col. 13, lines 4-6.

5.   Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moline et al. with Patent Number 5,883,957 in view of Shioda with patent Number 5,430,243.

6.   Regarding claims 41, 45-46, Moline teaches a quasi-real time or streaming MIDI music playing technique. Moline teaches receiving music data over a public communications line or the Internet, col. 8, lines 7-11, 63-67. Moline teaches judging whether data is specific data, col. 9, lines 43-46. Moline teaches receiving first time information as "MIDI file reader includes two subcomponents ... parser reads events in order from track, each event of course includes event message and elapsed time descriptor", col. 6, lines 44-48, and particularly, an elapsed time descriptor is converted to time stamp, col. 6, lines 58-59 and in more detail, col. 6, lines 51-55. Moline teaches subtracting a predetermined time [time delay] from time information as "the delay time period is added to the server start time", col. 13, lines 10-11 or "the amount of track that must be accumulated before receiver begins playing the track is determined by a delay parameter set by the user of receiver", col. 12, lines 1-3, "delay 617 in Fig. 6", col. 11, line 67. Moline teaches storing means for temporarily storing the data received by said reception means

as "MIDI stream generator keeps track of the last event that it output, the amount of time that has

actually elapsed since it began playing the track, and the total amount of time specified by the

elapsed time indicators in events played thus far", col. 6, lines 26-31, and "the result of this

operation is an event, which is then added to stored track in memory" at col. 6, lines 53-54.

Moline teaches processing means for starting the processing of the data temporarily stored in

said memory when said second time information reaches the first as "output event messages until

either an event is reached whose time stamp is greater", and "this incremental addition of parts",

col. 7, 8, lines 15-16, 4-6, "the delay varies as the preferred embodiment waits to begin

[subtracts] playing track until enough of track has accumulated", col. 11, lines 59-64, "beginning

at the start of stored track, the time stamp of each event is added to the server start time and

subtracted from the play time", col. 13, lines 12-14 and "MIDI stream generator generates MIDI

stream from stored track as follows: ... set the timer and wait for it to expire again", col. 7, lines

10-20. Moline teaches specific or first data as "type" of data, col. 9, lines 42-43. Moline teaches

"when the browser receives", col. 9, line 42 which means if it is determined that the type of data

is "first" or encrypted, or not completely received, Web enabled, or of a certain format, col. 5,

lines 51-61 then the data may or may not be delayed. Also, Moline teaches specific or first data

as "the music begins with the part contained in the first track to be received", col. 8, lines 1-2.

Moline teaches the invention in above claims except for explicitly teaching a second time,

however, Moline waits the said second time until the track is played. In that Moline operates to

buffer data for quasi-real time play the artisan would have looked to the computer data streaming

arts for details of buffering signals. In that art, Shioda, a related data buffering system, teaches a

"basic delay time", col. 4, lines 37 in order to delay "a voice and/or musical tone produced by an

electronic musical instrument", col. 4, lines 37-38. Shioda specifically teaches that "a basic

delay time-calculating routine for calculating a basic delay time based on a timing clock of a

MIDI signal is started", col. 4, lines 46-48 and col. 8, lines 28-30. A timing clock and second

time is taught that is used to determine delay times. Further, Shioda suggests that "an excellent

repeat effect to the performance", col. 1, lines 65-66 will result from applying the delay times.

The motivation to incorporate a delay and second time insures that a reference time is used to

accurately apply delay times. Thus, it would have been obvious to one of ordinary skill in the art

to incorporate the delay and second time as taught in Shioda into the MIDI player described in

the Moline patent because Moline operates with delay times to achieve streaming data and

Shioda suggests that streaming of data can be obtained with timers and set times. Therefore, by

the above rational, the above claim(s) are rejected.

7.   Regarding claims 42, Moline teaches an absolute time added to said first time as "time

stamp contains the sum of the elapsed times in all of the time descriptors from the beginning of

[the] track", col. 6, lines 53-54.

8.   Regarding claims 43, Moline teaches rectifying or delaying said first time, col. 13, lines

26-27.

9.   Regarding claims 44, Moline teaches a determiner that calculates the delay time, col. 11,

lines 41-44, 62-66, in accord with memory capacity col. 7, lines 1-4, col. 12, lines 64-66 and col.

13, lines 4-6.

Response to Amendment

4.   The broad claim language used is interpreted on its face and based on this interpretation

the claims have been rejected.

5.   The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

6.   The applicant presently claims a method of simply adjusting start times to achieve delayed streaming data. It is suggested more detail is claimed into what types of data resulting in streaming data is delayed or not. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

10.   Applicant suggests this "does not address the second operation, i.e. performing a time adjustment based on whether the data is first or not", Paper filed 9/23/04, Page 11, line 1. Moline teaches specific or first data as "the music begins with the part contained in the first track to be received", col. 8, lines 1-2. The receiver must determine whether a new song is starting to insure a continuous stream. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

11.   Applicant suggests time adjustment "is performed regardless of whether data is received first or not" and "no time adjustment is necessary after the first received data", Paper filed 9/23/04, Page 11, lines 4-5, 11-12. In applicant's invention, subsequently received data is not delayed. Thus, there must be a difference in meaning of "time adjustment". Time adjustment is a delay. In addition, "set the time" seems to mean change the time of the apparatus since the apparatus surely knew its relative time. However, the delay time is obviously the same as time adjustment and they precisely achieve the same result which is a delayed playing of a song. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

Conclusion

3.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure is disclosed in the Notice of References Cited. A close review of the references is

suggested. The other references cited teach numerous other ways to perform message delays, i.e.

EDI, thus a close review of them is suggested.

1.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The

examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.
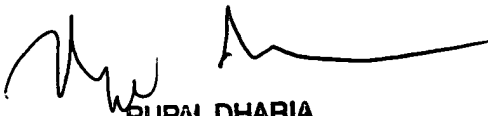
2.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia, can be reached on 571-272-4225. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-0044.

1.   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (571) 272-2100.

Stephan Willett

Patent Examiner

December 13, 2004

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER